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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/522,815

10/21/2005

Sumit Roy

3651-1025

6741

466 7590 02/23/2007  
YOUNG & THOMPSON  
745 SOUTH 23RD STREET  
2ND FLOOR  
ARLINGTON, VA 22202

EXAMINER

SONNETT, KATHLEEN C

ART UNIT

PAPER NUMBER

3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/522,815

Applicant(s)

ROY ET AL.

Examiner

Kathleen Sonnett

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-22, 25 and 27-32 is/are rejected.
- 7) ☒ Claim(s) 23, 24 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 12/12/2006 have been fully considered but they are not persuasive. Applicant points out that the instant invention does not incorporate one of the limitations of Berreklow's invention (U.S. 6,524,322) and adds that omission of an element and retention of its function is indicia of patentability (*In Re. Edge*, 359 F.2d 896, 149 U.S.P.Q. 556 (CCPA 1966)). However, the claim language uses the transitional term "comprising", which is open-ended and does not exclude additional, unrecited elements (see MPEP 2111.02).

### ***Claim Objections***

Claims 20, 31 and 32 are objected to because of the following informalities:

In claim 20, "of" appears twice in a row in line 1. In line 2, "organs" should read "organ". In line 17, "front" is misspelled. Appropriate correction is required.

In claims 31 and 32, the claims read, "the angle between the first plane and the second plane is....". Since the first and second planes are at the same angle with respect to the longitudinal axes of the first and second element, it is assumed by the examiner that the limitation should read "the angle formed between the first and second plane with the respective longitudinal axes is....". For the purposes of the art rejections below, the claims have been treated this way.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 20-22, 25, and 27-32** are rejected under 35 U.S.C. 103(a) as being unpatentable over Berreklouw (U.S. 6,524,322) in view of Bolduc et al. (U.S. 6,193,734). Berreklouw discloses a device for interconnection of a first organ to a second organ comprising a first element (16) with an axially through-going first passage along a first longitudinal axis, a first front end portion, a first front edge, a first rear end portion, and a first rear edge, and a second element (10) with an axially through-going second passage along a second longitudinal axis, a second rear end portion or receiving portion, and a second front portion, wherein the diameter of the second passage is larger than the diameter of the first element and the second front portion is provided with at least two elongated first fingers which are arranged at intervals along the circumference of the first passage and each of the fingers is comprised of a main portion (10) extending from the second front portion and in the direction of the second longitudinal axis, the main portion being continuous with a gripping part (11) wherein the gripping part is directed away from the second longitudinal axis. Berreklouw fails to disclose the main portion of the fingers being displaced radially outwards when the first element is introduced into the second element. Berreklouw instead discloses gripping parts whose configurations are pre-tensioned to face inwardly and can be released with the aid of other instruments or mechanical aids.

However, Bolduc et al. discloses that it is old and well known in the art to have fingers comprising a gripping portion and a main portion in a system for performing an anastomosis surgery that can be displaced radially outwards by inserting a tube inside of the passage within the gripping portions. In particular, tube 16 is inserted inside of element (32) so that gripping portions (30) and the main portion (36A) are influenced to engage with an edge portion of an aperture. Berreklouw discloses that it is advantageous to have the inner tube (with gripping portions) of an anastomosis device in a sloping, inwardly facing position when inserted through

an aperture so that the stretching of the target vessel around the connection opening is not necessary (col. 6 lines 27-46). Using the teachings of Bolduc et al. to move inwardly facing gripping portions into engagement with the target vessel would simplify the device of Berreklouw as a mechanical aid to release pre-tensioned gripping portions would no longer be necessary. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Berreklouw to include gripping portions and a main portion that are displaced radially outwards by inserting the first element into the second element.

Regarding claim 21, the second element is being considered to comprise attached elements (10) and (15), and therefore comprises at least one second finger (14) that includes a main portion (15) and a support part (14).

Regarding claim 22, element 2, which includes the second finger (14) may be convex (col. 10, lines 62+).

Regarding claim 25, the second element is being considered to be element (10) only and the first element is provided with an external sleeve-shaped casing (15) with a front end, the casing being continuous with the first element at the first rear edge, such that the casing and the first element define a cylindrical annulus that stops short of the front end of the first element.

Regarding claim 27, the first element is provided a shoulder (bottom of enlarged portion 16) that abuts against the second rear end portion of the second element during insertion of the first element in the second element, thereby restricting the depth of insertion of the first element in the second element.

Regarding claim 28, the second element may be perforated (col. 9, line 15).

Regarding claim 29, the rear end of the second element is being considered flared since rear portion (10) is thicker than portion (11) and so the outer diameter is larger at the rear portion.

Regarding claim 30, the front edge (24) of a first element is located in a first plane and the gripping parts are located in a second plane, the planes forming the same angle with the longitudinal axes of the respective elements (see fig. 3).

Regarding claim 31, the angle formed by the planes with the respective longitudinal axes appears to be at 90 degrees in fig. 3. (Please see claim objections above. Claims 31 and 32, for the purposes of art rejections, have been treated as though they say, "the angle formed between the first and second plane with the respective longitudinal axes is....".

Regarding claim 32, see fig. 13b.

#### ***Allowable Subject Matter***

Claims 23, 24, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. 3,908,662 to Razgulov et al.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Sonnett whose telephone number is 571-272-5576. The examiner can normally be reached on 7:30-5:00, M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCS 2/15/07

  
GLENN K. DAWSON  
Principal Examiner